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WATER RESOURCES  
WESTERN REGION

**PROTEST TO 63-34403  
CAT CREEK ENERGY  
WATER RIGHT APPLICATION**

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Received by KK

07/2008

STATE OF IDAHO  
DEPARTMENT OF WATER RESOURCES

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SEP 17 2018

WATER RESOURCES  
WESTERN REGION

NOTICE OF PROTEST

This form may be used to file a protest with the department under sections 42-108B, 42-203A, 42-203C, 42-211, and 42-222, Idaho Code. The department will also accept a timely protest not completed on this form if it contains the same information.

1. Matter being protested 63-34403 Cat Creek Energy
2. Name of protestant Wendi (John) Combs
3. Protestant's Representative for service (If different than protestant)  
N/A
4. Service mailing address 704 Lindenwood Drive, Nampa, ID 83686
5. Service telephone no. 208-250-2592 Email Address: wendi452@aimintl.com
6. Basis of protest (including statement of facts and law upon which the protest is based)  
I protest the issuance of a water right to Cat Creek Energy  
(list attached) due to the wildlife and recreational area  
it will destroy.  

(additional pages may be attached to describe nature of the protest)
7. What would resolve your protest? Deny issuance of a water right to  
Cat Creek Energy.

I hereby, acknowledge that if I, or my designated representative, fails to appear at any regularly scheduled conference or hearing in the matter of which I have been notified at the address above, the department may issue a notice of proposed default against me in this matter for failure to appear. I also verify that I have served a copy of this protest upon the applicant.

Signed this 14th day of September, 2018  
Wendi Combs  
Protestant Wendi Combs

Protestant's Representative



## PROTEST TO 63-34403 CAT CREEK ENERGY WATER RIGHT APPLICATION

1. The February 1, 2016 and November 4, 2016 letters (attached) from Fish and Game (F&G) outline many issues regarding the project that I feel strongly about and my reason to protest the water right.
  - The proposed Cat Creek Energy (CCE) site location lies within a major migration corridor for mule deer, elk and Pronghorn. Site location is critical and this project does not belong on Anderson Ranch Reservoir (ARR).
  - There is an endangered species in the water – the bull trout and other fish and wildlife. Vast numbers of wildlife at ARR will be significantly compromised by the CCE project.
  - F & G estimates Elmore County businesses receive about \$16 million in revenue annually from sportsmen. In 2011, an economic survey was completed for the entire state. The survey estimated anglers made 26,000 trips and spent \$4,270,000 to fish at ARR. Big game hunting, camping and boating are also huge economic drivers at ARR. This revenue will be substantially impacted by loss of wildlife and use of this recreational area.
  - F & G are concerned about water quality impacts, including water temperature, water fluctuations and blue green algae. There will be many silos pumping 24/7, 365 days a year out of that reservoir. What happens to the water (upper and lower) when ARR is extremely low from being drawn down for irrigation?
  - F & G think the elimination of 1,000 acres of habitat for the upper reservoir could have a funneling effect to migrating big game into areas being developed for the wind and solar part of the project.
  - The greater sage grouse is a threatened species and there are noted active leks around the project site - 1 new lek and 2 new unconfirmed leks as of 2016. F&G worked with the Mountain Home Music Festival to educate people on the sage grouse (attached). It is ironic that the upper reservoir (reason for water right) is critical sage grouse territory and reason to deny the water right.
  - Wildlife are public trust resources that belong to the people and Idaho citizens. CCE (private property owner) should not be allowed to risk this public resource or infringe on any public or private interest that comes to ARR area for any reason. The risk to those animals and fish should be enough to deny the water right.
2. The fact that CCE revised the Development Agreement to increase the upper reservoir from 30,000 acre feet to 100,000 acre feet, further infringing on the wildlife that F & G outlined prior to the increase.
3. The fact that the Amendment (attached) to the CCE Development Agreement (related to the water) with Elmore County was not signed at the September 7, 2018 hearing.

4. In the Amendment to the Development Amendment, CCE states they will withdraw its pending protest against the County and the County agrees not to protest against CCE's water right. I believe this to be a conflict of interest and a blatant form of extortion.
5. As a property owner adjacent to the CCE project, the noise pollution caused by the hydro project (during and post construction) will compromise my property value and the peaceful environment I enjoy.
6. Road traffic to and from ARR, Fairfield, Sun Valley and Mountain Home will be compromised (during construction) due to the vast amount of equipment and materials needed to build a project of this scope. There will be major delays on the existing road and the potential for crashes and fatalities (including wildlife) from vehicles trying to pass.
7. I believe the proposed project will hurt all businesses from Little Camas Reservoir to Pine/Featherville due to the loss in recreational visitors because of the undesirable views and noise pollution caused by the project.
8. The power for this project will go out of state. Idaho does not need the power.
9. CCE stated it will be a lengthy permit process but have been misinforming the public that they intend to be up by 2019. The Bureau of Reclamation letter (attached) clearly states they misinformed the public.
10. I have hundreds of signatures and letters (provided upon request) against the project. Heartfelt stories of people that live or have traveled to the area for years.
11. The public was told it would be a 'one time draw' from ARR and now CCE wants to use Elmore County's 200 cubic feet priority water right.
12. CCE claims they will not take any water already appropriated and have filed for a water right that would siphon off only spring runoff that would spill over the dam. This is stealing water needed to flush salmon and steelhead smolts down the Snake and subsequent Columbia River to the Pacific Ocean.
13. What if they never provide water to Mountain Home? What if this was their plan all along and they just want to rent the wind pads to outside people?
14. Notices should eventually be sent to all the residents of Pine/Featherville as this 1.5 to 2 billion project will affect more than just those initially notified or within 1 mile from the project site.
15. CCE should proceed to commence all the environmental and wildlife studies necessary through BOR, FERC and NEPA, etc. These studies will determine if this project is even feasible and if it can truly proceed with a water right or any construction activities.
16. The approval of a water right for this project will set a precedence for other private property owners and interested parties on ARR.

For all the reasons stated above, I respectfully urge the Idaho Department of Water Resources to deny Cat Creek Energy a water right on Anderson Ranch Reservoir.



Wendi & John Combs

704 Lindenwood Dr. and 1726 Aspen Dr., Pine, ID  
Nampa, ID 83686





**IDAHO DEPARTMENT OF FISH AND GAME**

MAGIC VALLEY REGION  
324 South 417 East, Suite 1  
Jerome, Idaho 83338

C.L. "Butch" Otter / Governor  
Virgil Moore / Director

February 1, 2016

Alan Christy, Director  
Elmore County Land Use and Building Department  
520 East 2<sup>nd</sup> South Street  
Mountain Home, ID 83647

**RE: Wildlife Mitigation Plan for the proposed Cat Creek Energy Generation Facility**

Dear Alan:

Idaho Department of Fish and Game (IDFG) staff has reviewed the Elmore County Wildlife Mitigation Plan for the proposed Cat Creek Energy Generation Facility. It is our understanding the plan was prepared in response to Elmore County's (County) decision to require Cat Creek Energy, LLC (CCE) to complete an Environmental Impact Study for conditional use permits to construct and operate an energy generation facility. According to the plan the facility would include a 400 MW pump-store hydroelectric facility with a 50,000 acre-ft. reservoir, a 40 MW AC photo-voltaic solar energy array, a 39 tower, 110 MW wind energy facility, approximately 8 miles of 230 kV transmission line, a substation, operations and maintenance buildings, an unknown quantity of new and improved all-weather road, and various other infrastructure. IDFG staff has participated in the conditional use permitting process with the County and CCE since July 2015. Our involvement to date has included three briefing and issue identification meetings with CCE representatives and their consultants and development of proposals for services provided by IDFG. No commitment has been made by CCE to retain IDFG services.

The purpose of these comments is to assist the decision-making authority by providing a technical review of mitigation plan relative to potential adverse effects on fish and wildlife and their habitats and an evaluation of the strategies identified in the plan to mitigate adverse effects. It is not the purpose of IDFG to support or oppose this proposal. Resident species of fish and wildlife are property of all Idaho citizens, and IDFG and the Idaho Fish and Game Commission are expressly charged with statutory responsibility to preserve, protect, perpetuate and manage all fish and wildlife in Idaho (Idaho Code 36-103 (a)). In fulfillment of our statutory charge and direction as provided by the Idaho Legislature, we offer the following comments regarding the mitigation plan.

**Background Information**

Wildlife Resources

The Cat Creek area provides habitat for an assortment of native wildlife. The project area lies within a major migration corridor for mule deer, elk, and pronghorn moving from high elevation summer habitats to low elevation winter range and back. While the exact pathways and magnitude of the migration has not been quantified, several thousand animals likely use this corridor on an annual basis. Data from elk and mule deer radio-marked during winter in 2015 and 2016 confirmed

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considerable seasonal movements through the project area. Energy development has the potential to disrupt these movements.

Nearly the entire project area contains 'important' sage-grouse habitat as identified by the State of Idaho. Two occupied sage-grouse leks are known to occur within a half mile of the project area. From 2013-present the Mountain Home Sage-grouse Local Working Group has conducted a radio telemetry study of grouse in and around the Cat Creek area. Data from this study indicates grouse use the project area during all seasons, but particularly during the breeding season (mid-March through early June).

In Idaho, roughly 80% of nests occur within 8-12 km (5.0-7.5 miles) of capture leks. Sage-grouse nest success is highest in areas with adequate sagebrush overstory (>15%), where abundant perennial herbaceous cover is available to conceal nests. Components of suitable sage-grouse (and other sagebrush obligate bird and mammal) habitat are present in the project area including adequate sagebrush cover and height. Project development has the potential to alter sage-grouse productivity and use of the area. Research has shown that anthropogenic disturbances like energy developments, linear features (improved roads), and tall structures (communication towers, transmission towers, wind turbines, etc.) can affect sage-grouse habitat use, production, and survival at distances beyond the development footprint (indirect effects - effects caused by the action and are farther removed in distance or later in time, but are still reasonably foreseeable).

Numerous raptor species have been documented during the breeding season in and around the project area including species of conservation concern like golden and bald eagles and peregrine falcons. The geology, topography, and hydrology of the Cat Creek area suggest the project area may also lie within migration corridor for raptors. Research has shown that renewable energy can be compatible with breeding and migrating raptors if addressed early during the planning phases of a project.

Like raptors, the geology, topography, and hydrology of the Cat Creek area suggest the project area may support resident and migratory bats. Little information is available for bats in the area due to a lack of survey effort. Wind energy related bat mortality (primarily migratory species) has been well documented throughout the western U.S. In southern Idaho bat mortality has been documented at several wind energy facilities. The cumulative implication of this form of mortality on bat populations is unclear.

#### Fish Resources

Anderson Ranch Reservoir (ARR) is managed as a mixed species fishery including rainbow trout, mountain whitefish, kokanee, bull trout, landlocked Chinook salmon, yellow perch, and smallmouth bass fishing opportunities. The majority of the fishing pressure is made up of those anglers targeting kokanee and smallmouth bass. The quantitative management goal for ARR is to provide a fishery that result in catch rates of 1 kokanee / hour with a mean size of 12-14 inches. There is a history of hatchery rainbow trout supplementation; however, this hatchery trout program has been suspended because angler returns did not meet management goals. Kokanee and bull trout express an adfluvial life history (seasonally migrating to and from reservoirs and streams) largely dependent upon the South Fork Boise River (SFBR) upstream from the reservoir. Reservoir management directly influences these adfluvial species particularly related to their access to the SFBR.

The SFBR is mostly under general rules management with emphasis on a put-and-take rainbow trout fishery and a small section in the upper drainage is managed for quality trout. The fishery is made up



of redband trout, rainbow trout, brook trout, bull trout (catch-and-release only), kokanee, and mountain whitefish. Adfluvial kokanee and bull trout are seasonally available within this fishery. There is an active and popular stocking program within the SFBR and Big Smoky Creek including one put-and-take pond. The current hatchery program is meeting or nearly meeting angler return management goals. The kokanee spawning run represents a unique experience for campers and day trip recreationists.

#### Fish and Wildlife Based Recreation

Hunting, fishing, trapping and wildlife viewing are major economic drivers in Idaho, supporting over 14,000 jobs and hundreds of small businesses, many of which are in rural parts of our state and generating over \$1.4 billion per year for Idaho's economy. An economic survey of fishing was completed for the entire state in 2011. Spending by anglers on fishing trips to Elmore County ranked 15<sup>th</sup> out of the 44 Idaho counties. Angler spending on fishing with destinations in Elmore County was about \$14 million. This survey estimated that anglers made approximately 26,000 trips and spent about \$4,270,000.00 to fish at ARR.

Hunting is an extremely popular recreational activity in Elmore County. As an example, in 2014 hunters spent nearly 17,000 days pursuing deer and almost 4,000 days hunting elk in the SFBR drainage alone. Hunting-related trip expenditures in 2011 for big game in Idaho were estimated at \$96/trip/day; translating to around \$2 million in economic activity in and around Elmore County for mule deer and elk hunting alone (license and tag sales, food and lodging, gear and equipment, transportation, etc.).

#### **General Comments**

IDFG finds that the proposal is less of a mitigation plan than a general series of intended development actions and Best Management Practices (BMPs). IDFG considers BMPs to be standard in any development proposal, and as such not a mitigation strategy. The lack of detail made a realistic determination of resource impacts infeasible. Therefore, discussions of mitigation are premature and impractical.

From IDFG's perspective, a mitigation plan should disclose the full range of actions and the potential effects of those actions prior to developing a strategy on how to mitigate. An effective mitigation plan should (1) identify potentially affected resources, (2) determine potential impacts to those resources, (3) estimate the scope of impacts, (4) evaluate strategies to avoid, minimize, or replace effected resources, and (5) contain performance measures and an adaptive management framework for monitoring mitigation effectiveness. We have included an IDFG working document discussing how impacts should be assessed and mitigated.

At a minimum, we suggest the County seek a mitigation plan that discloses three items, in order. These are:

- The specific items proposed for the development which will cause impacts to fish and wildlife resources.
- For each proposed development item, an analysis and accounting of the impacts to fish and wildlife resources which would potentially occur.
- For each development item, a prioritized strategy (in order of preference) to (1) avoid the impacts identified by not implementing the development item or choosing an alternative item, (2) minimize the impacts by altering the proposed item, or (3) mitigate for the impacts by replacing the values lost to the public or a similar value of related resources.

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## Specific Comments

We have several over-arching questions regarding the plan and have identified multiple inconsistencies, inaccuracies, and information gaps. A few of these include:

### Fish Resources/Water Quality/Water Management

- We were unable to determine how and if the plant would produce power in the event water were delivered downstream after high flows had subsided; which is the period identified for upper reservoir recharge (page 6, paragraph 3).
- The document repeatedly refers to replacing lost fish resources as mitigation for fish lost to entrainment, but fails to identify how this will be measured and valued (page 16, paragraph 5 and elsewhere). Further, the proposal eludes to design features for the pump inlet and powerhouse to limit entrainment, but offers no detail on what or how this will be achieved and how it will be monitored for effectiveness.
- A daily  $\leq 2.2$  ft. fluctuation in ARR elevation will be most noticed in the inlet area and in the head of bays (SFBR, Lime Cr, Falls Cr, etc., page 18, paragraph 2). These daily fluctuations could have substantial impacts to boat ramps, shoreline boat mooring, and kokanee escapement from July-September. The rapid dewatering of ARR in late summer/early fall already stall kokanee escapement into the SFBR until the mud flat delta stabilizes. Kokanee are vulnerable to predation and delayed during this time. It is likely a daily 2+ foot fluctuation will exacerbate this problem and potentially strand kokanee. While we will defer to the US Forest Service regarding impacts to boat ramps they manage, it is likely boaters that anchor boats just off the shoreline could experience problems.
- We understand the details may not be available yet, but entrainment issues have been very important in licensing discussions for hydroelectric projects on the Snake River (page 20, bullets 3 and 4). In many cases, post-construction entrainment problems cannot be economically addressed by the license holder because the infrastructure does not accommodate the preferred entrainment mitigation. This discussion should be fleshed out early to allow the applicants to incorporate best options, or at least include the potential for enhanced entrainment deterrence options should they be warranted (e.g., bubble screens, consideration of intake/flume elevation in relation to seasonal thermocline, etc.).
- The proposal discusses water quality as it relates to daily operations, but does not address water quality impacts should water be made available to downstream users (e.g., when  $> 10,000$  acre-ft. are released to meet downstream demand, page 51, paragraph 1). The proposal implies studies are in progress, and attempts to address water quality are from a macro perspective. While this is understandable, more careful discussion and study is warranted. For example, the hydro discharge occurs in a relatively confined reach of the reservoir. A 10,000 acre-ft. release could have a substantial localized effect that would then slowly move down reservoir toward the dam. We are concerned this could create a barrier type effect for fish. We question whether a disturbed thermocline (stratification of water based on temperature) would remain localized or would drift toward the dam. The proposal also failed to address runoff into the upper reservoir. Nutrient loaded runoff could lead to eutrophication of the upper reservoir. It is also unclear if operation of the facility over time and under certain conditions could mobilize sediment.
- The proposal should elaborate on the "unlikely if properly maintained" statement about Biological Demand (BOD, page 59, paragraph 4). A new reservoir will grow aquatic vegetation and have algae blooms. Natural processes will affect the BOD particularly if

runoff or land management results in surface runoff nutrient loads. We agree BOD will be less of an issue because of the frequent turnover; however, it does appear that a resident pool will persist. Eutrophication will likely occur and could impact ARR at some level.

- The proposal indicates entrained fish will be detected, captured, and transported but again provides no detail on how this will occur (page 76). We assume there will be some level of "detected entrained fish" that would invoke the capture and transport of those fish. The proposal failed to identify who will transport those fish. The capture and transport of live fish is under IDFG jurisdiction. IDFG consultation and permit authority would be required with the US Fish and Wildlife Service if bull trout were involved.

#### Wildlife Resources

- The reference to open space being maintained to allow the project area to be used as a migration corridor is probably not realistic nor is it supported by science. The elimination of approximately 1,000 acres of habitat being used to site the upper reservoir will likely have a funneling effect that 'squeezes' migrating big game into areas also being developed for wind and solar and other ancillary infrastructure. Though some level of continued movement through the area would be anticipated, it is highly likely that the structural complexity of the new environment would, at some level, affect the current degree of use. The long-term ramifications of this effect are unknown, but certainly worth further study.
- The plan contains little discussion of indirect effects. While it may be beyond the purview of the County to require a hard look at indirect effects, we suggest they should be considered particularly in the context of sage-grouse and big game habitat use, productivity, and movement.
- Statements implying the loss of habitat as a result of project development will not have a significant impact on wildlife because these habitat types are abundant elsewhere is unfounded. The use of an area by wildlife represents a suite of habitat selection criteria that include, but are not limited to (1) the availability of resources arranged in a manner that makes them accessible (without excessive cost to energetic resources of the animal), (2) learned behaviors resulting from repeated generations of use and individual experience/familiarity, and (3) avoidance of risks (e.g., predators, lower quality habitats, geography, perceived threats, etc.). Impacts to one of these selection criteria may not force an animal to avoid previously used areas, but may have survival or productivity implications. For example, sage-grouse are known to exhibit strong fidelity to seasonal use areas. Hens commonly lay nests less than 0.5 miles from previous nest sites, often moving along identical routes from year to year, using the same breeding locations throughout their lives. If a disturbance eliminates or reduces the quality of a portion of their habitat, they do not simply move to adjacent habitats. Their learned behaviors force them to use suboptimal habitats which can lead to reduced nest initiation, reduced nest success, reduced fledging success, disrupted mating activities, or mortality.
- The plan recognizes the project area could provide habitat for resident and migratory bats, raptors, and songbirds. The plan acknowledges wind energy related bird and bat mortality can be an issue, but failed to articulate how potential mortality would be assessed, analyzed, and mitigated (avoided, minimized, or replaced).
- The potential for utility-scale solar energy facilities to affect wildlife was not addressed. Potential effects include habitat loss and fragmentation, altered distribution and dispersal patterns, altered or interrupted migration routes, avoidance of otherwise suitable habitat, disturbance during sensitive periods, injury, and/or mortality. The proposal should clearly

communicate how potential effects would be assessed, analyzed, and mitigated (avoided, minimized, or replaced).

#### Closing

We appreciate the opportunity to provide a technical review of the mitigation plan. We remain committed to assist the County in review of proposals regarding this development. However, enough accurate and substantive detail must be provided regarding the proposed action, its effects, and appropriate mitigations for IDFG to assess the value of the proposal relative to fish and wildlife resources in the area.

As the conditional use permitting process moves forward, including any environmental analysis, the State of Idaho may be submitting comments from relevant state agencies in a coordinated manner. These comments will be provided by a Cooperating Agency designated by the state. If you have any questions or need additional information please contact Mike McDonald, Environmental Staff Biologist, at this office.

Sincerely,



Toby Boudreau  
Magic Valley Regional Supervisor

Cc: Cat Creek Energy, LLC (J. Carkulis)  
OER – Boise (J. Chatburn)  
IDFG – Boise (S. Kiefer/G. Vecellio)  
Ecc: R4 staff



IDAHO DEPARTMENT OF FISH AND GAME  
MAGIC VALLEY REGION  
324 South 417 East, Suite 1  
Jerome, Idaho 83338

C.L. "Butch" Otter / Governor  
Virgil Moore / Director

November 4, 2016

Alan Christy, Director  
Elmore County Land Use and Building Department  
520 East 2<sup>nd</sup> South Street  
Mountain Home, ID 83647

**RE: Cat Creek Energy, LLC – Appeal to the Board of County Commissioners for five (5)  
Conditional Use Permits**

Dear Alan:

Idaho Department of Fish and Game (IDFG) staff has reviewed the conditional use permit applications (applications) submitted by Cat Creek Energy, LLC (CCE) for the proposed Cat Creek Energy Generation Facility. It is our understanding this opportunity for comment is a result of CCE's appeal to the Elmore County Board of Commissioners. According to information provided in the applications, the facility would include a 400 MW pump-store hydroelectric facility with a 50,000 acre-ft. reservoir, a 40 MW AC photo-voltaic solar energy array, a 39 tower, 110 MW wind energy facility, approximately 8 miles of 230 kV transmission line, a substation, operations and maintenance buildings, an unknown quantity of new and improved all-weather road, and various other infrastructure. IDFG staff has participated in the conditional use permitting process with Elmore County (County) and CCE since July 2015. Our involvement to date has included briefing and issue identification meetings with CCE representatives and participation in public hearings. IDFG also provided the County formal written comments on CCE's Elmore County Wildlife Mitigation Plan (see attached).

The purpose of these comments is to assist the decision-making authority by providing a technical review of the applications relative to potential adverse effects on fish and wildlife and their habitats and an evaluation of the strategies identified in the plan to mitigate adverse effects. It is not the purpose of IDFG to support or oppose this proposal. Resident species of fish and wildlife are property of all Idaho citizens, and IDFG and the Idaho Fish and Game Commission are expressly charged with statutory responsibility to preserve, protect, perpetuate and manage all fish and wildlife in Idaho (Idaho Code 36-103 (a)). In fulfillment of our statutory charge and direction as provided by the Idaho Legislature, we offer the following comments regarding the applications.

In IDFG's February 2016 comment letter to the County, we provided background information, data, and issues relative to fish and wildlife resources and associated recreation in and around the proposed project area. While this input is still relevant to the applications, IDFG has continued to gather data on the seasonal movements of mule deer and elk relative to the proposed project. Our telemetry data continues to suggest considerable seasonal use of the project area, particularly by elk moving from high elevation summer habitat to winter range and back (Maps 1 & 2). We have additional telemetry data that will be available in mid-November for the hearing.

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<http://fishandgame.idaho.gov>

007822

IDFG monitors sage-grouse leks throughout the state on an annual basis. In 2016 one new occupied lek (E076) and two new unconfirmed leks were identified on the project area (Map 3).

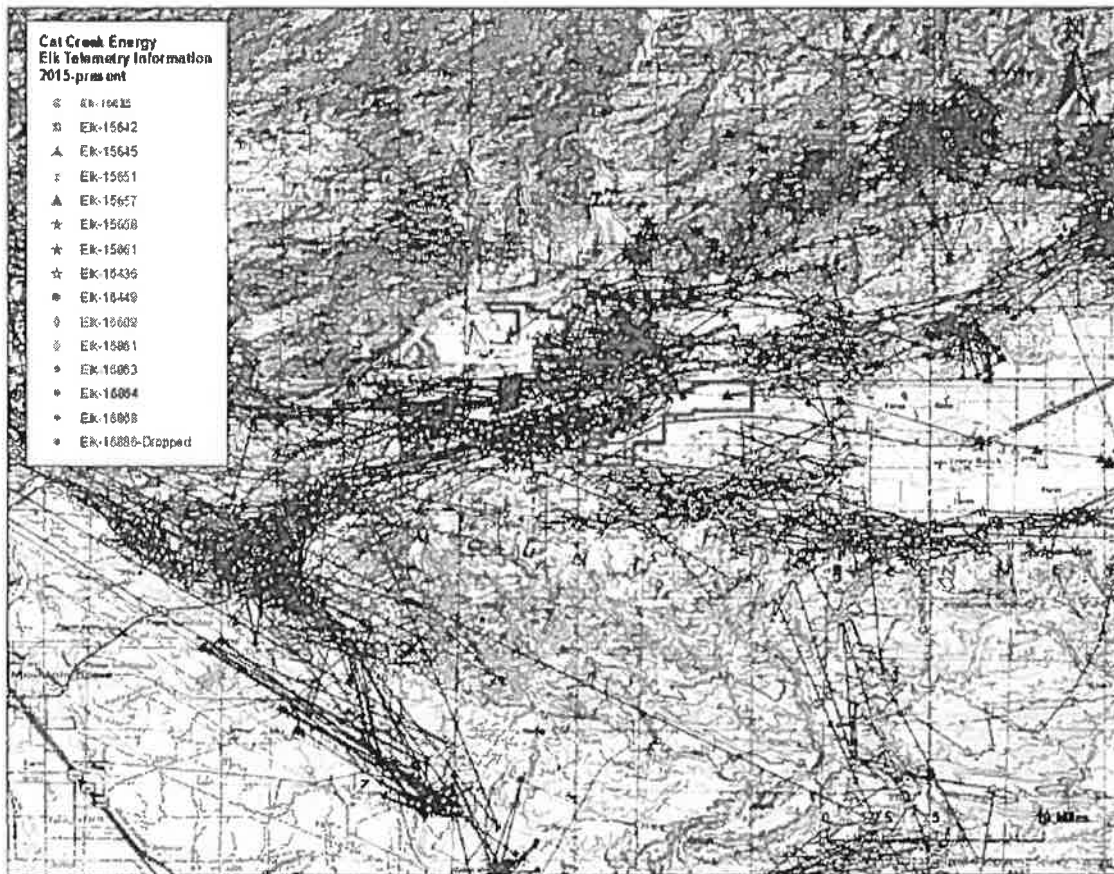
We appreciate the opportunity to provide input on the applications. We remain committed to assist the County in the review of proposals related to this development proposal. If you have any questions or need additional information please contact Mike McDonald, Environmental Staff Biologist, at this office.

Sincerely,

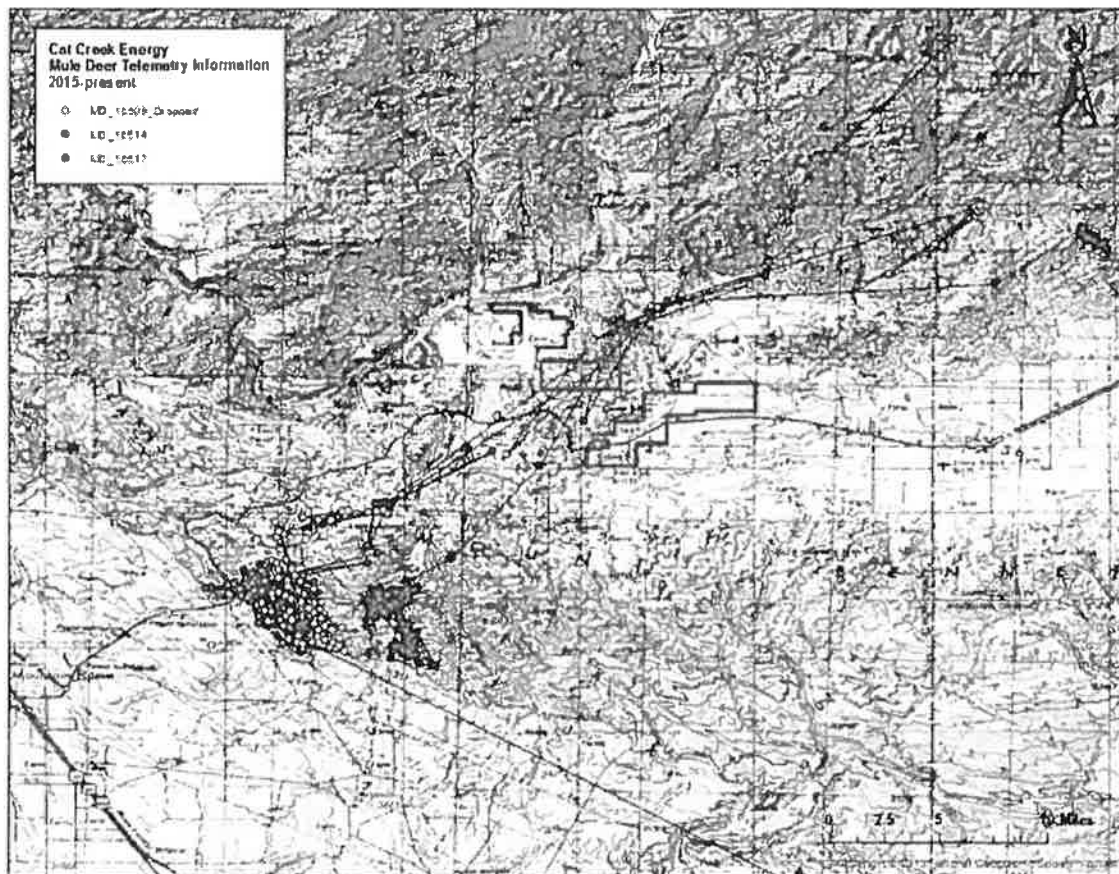


Toby Boudreau  
Magic Valley Regional Supervisor

Cc: Cat Creek Energy, LLC (J. Carkulis)  
OER – Boise (J. Chatburn)  
IDFG – Boise (S. Kiefer/G. Vecellio)  
Ecc: R4 staff

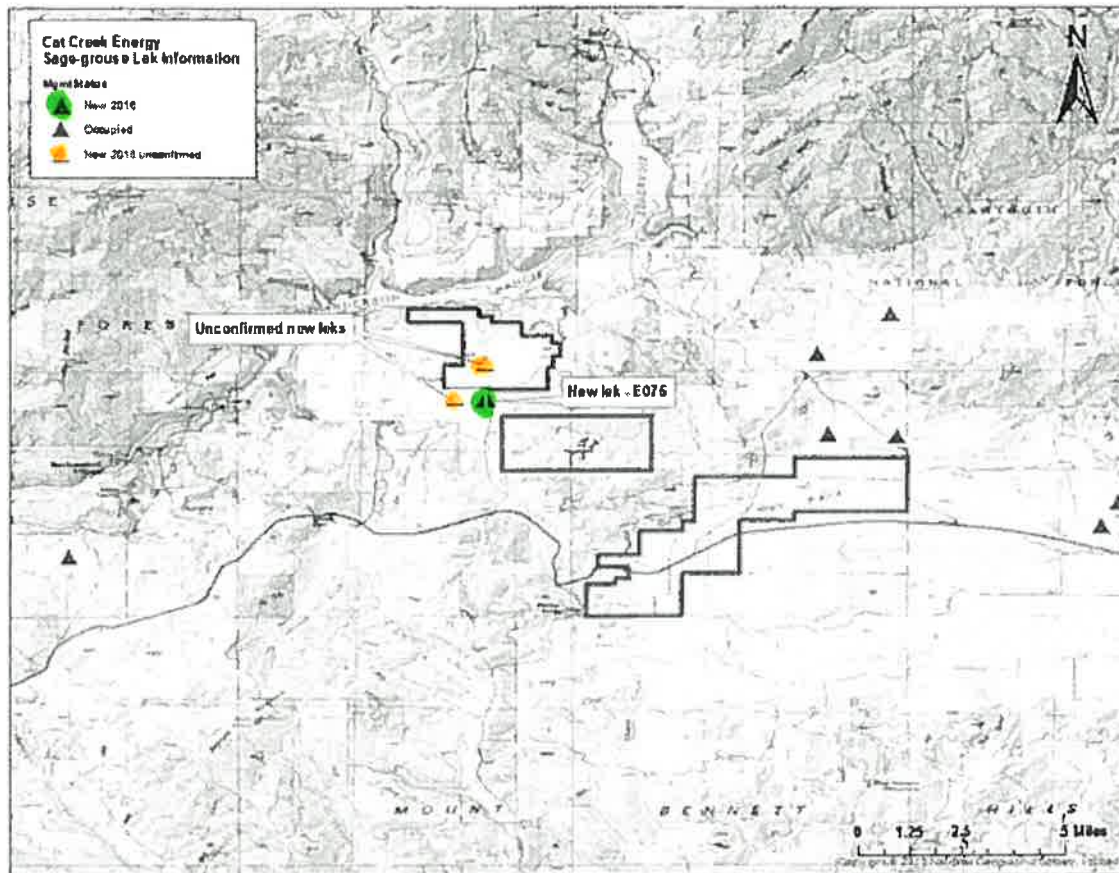


Map 1 - Elk telemetry data, 2015-present, CCE Generation Facility, Elmore County.



Map 2 - Mule deer telemetry data, 2015-present, CCE Generation Facility, Elmore County.





Map 3 - 2016 occupied sage-grouse lek locations, CCE Generation Facility, Elmore County.

received  
11-14-16 BSB

**Beth Bresnahan**

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**From:** Alan Christy  
**Sent:** Monday, November 14, 2016 8:11 AM  
**To:** Beth Bresnahan  
**Subject:** FW: Cat Creek Energy

Alan Christy  
Director  
Elmore County Land Use & Building Department  
520 East 2nd South, Mountain Home, ID 83647  
Ph: (208) 587-2142 ex. 269 \ Fax: (208) 587-2120  
[achristy@elmorecounty.org](mailto:achristy@elmorecounty.org) \ [www.elmorecounty.org](http://www.elmorecounty.org)

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**From:** McDonald, Mike [mailto:[mike.mcdonald@idfg.idaho.gov](mailto:mike.mcdonald@idfg.idaho.gov)]  
**Sent:** Tuesday, November 08, 2016 4:21 PM  
**To:** 'James Carkulis' <[jcarkulis@exergydevelopment.com](mailto:jcarkulis@exergydevelopment.com)>  
**Cc:** Roger Rosentreter <[roger.rosentreter0@gmail.com](mailto:roger.rosentreter0@gmail.com)>; Gordon Brittan <[gbrittan@exergydevelopment.com](mailto:gbrittan@exergydevelopment.com)>  
**Subject:** RE: Cat Creek Energy

James:

As we've discussed previously the deer and elk information is part of an on-going statewide research project. As data becomes available, we are using it to help inform the Decisions Makers (Elmore County Commission) as to wildlife resource issues associated with the proposed project area. The additional data continues to reinforce what we've previously stated, deer and elk travel through the proposed project area as part of their seasonal movements from higher elevation summer habitats to low elevation winter habitats and back. The latest download (through Oct 2016), which we pulled earlier this week, will be ready in time for next week's hearing.

As noted in the letter to Elmore County, the new lek (ED76) on the proposed project area was discovered as part of the State's annual lek monitoring program. While IDFG is the designated manager of the statewide database, the lek monitoring program (data used to populate the database) is a collaborative effort with multiple federal, state, and private partners. As is the case for many areas in southern Idaho, we are unaware of the status (i.e., presence/absence) of wildlife resources until an actual survey is conducted. This was the case for the discovery of this lek. It was discovered during surveys on adjacent USFS lands and confirmed/verified during at least two follow-up visits.

With regards to the bat surveys, the work we did was part of a larger onetime reconnaissance survey throughout the region intended to help us (and our partners) identify areas for future bat monitoring work. The anabat data has yet to be analyzed.

Hope this helps.

Mike McDonald  
Environmental Staff Biologist  
Idaho Department of Fish and Game  
324 South 417 East, Suite 1  
Jerome, ID 83338  
(208) 324-4359  
(208) 324-8489 fax



**FIRST AMENDMENT TO DEVELOPMENT AGREEMENT RELATIVE TO CAT  
CREEK ENERGY, LLC CONDITIONAL USE PERMITS (CUP 2015-03, CUP 2015-04,  
CUP 2015-05, CUP 2015-06, CUP 2015-07)**

This First Amendment to Development Agreement Relative to Cat Creek Energy, LLC Conditional Use Permits (CUP 2015-03, CUP 2015-04, CUP 2015-05, CUP 2015-06, CUP 2015-07) (the "Amendment") is entered into this \_\_\_\_ day of \_\_\_\_\_, 2018, ("Effective Date"), by and between Elmore County (the "County"), a political subdivision of the State of Idaho, and Cat Creek Energy, LLC, an Idaho limited liability company (the "Developer") (collectively, the "Parties").

**WITNESSETH:**

WHEREAS, The Parties entered into a Development Agreement on February 9, 2018;

WHEREAS, As part of the Development Agreement, the Parties agreed to defer negotiations and agreement on certain provisions related to water diversion and delivery to a later date, not to exceed December 31, 2018,

WHEREAS, The Parties have now had an opportunity to negotiate certain provisions related to water diversion and delivery and the Parties desire to memorialize the terms as more fully set forth herein; and

WHEREAS, The Parties desire to enter into this First Amendment to Development Agreement to replace Section 2.2 of the Development Agreement which states:

**2.2. Water Storage and Delivery.** Given the complexities of water diversion and delivery related to the Project, and in an effort to move the Project forward without further delay, the County and Developer have agreed to defer the negotiation and execution of all Water Diversion and Delivery Agreements to a later date, to be heard after notice and public hearing, but which shall be done prior to December 31, 2018 or the CUP related to water shall lapse.

NOW, THEREFORE, in consideration of the promises, covenants, and provisions set forth herein, the Parties agree as follows:

**AMENDMENT**

The Parties hereby agree to replace Section 2.2 of the Development Agreement with the following:

**2.2 Water Diversion and Delivery.**

(a) The Developer shall divert and deliver water at a rate of up to 200 cubic feet per second (cfs) to the County under its water right, in priority, on a continuous flow basis, from the South Fork Boise River to Little Camas Reservoir by use of Developer's infrastructure, as long as (1)

the water can be accepted into Little Camas Reservoir, as determined by the Mountain Home Irrigation District, in its sole discretion; and (2) the water diversion and delivery does not prevent the Developer from performing its ordinary water operations, which term is defined as generating electricity via hydro-power or performing ordinary maintenance of its hydro-power infrastructure and (3) Cat Creek Reservoir stored water is at least 20,000 acre feet. Developer's duty to divert and deliver water to the County shall be suspended during any emergency conditions that may exist outside of the Developer's control. The Developer agrees to use commercially reasonable efforts not to schedule maintenance work during the anticipated water diversion and delivery time periods for the County.

(b) For those years when the County elects to take water delivery under Section 2.2 (a) above, charges for water diversion and delivery shall be billed to the County based on the following: (1) the Developer's actual cost of electricity for pumping the quantity of water diverted and delivered to the County under its water right; plus (2) charges resulting from multiplication of the Developer's Operation and Maintenance Costs, as hereafter defined, in dollars, times a ratio with the numerator being the actual volume of water diverted and delivered to the County under its water right, and the denominator being the total volume of water pumped from or discharged to Anderson Ranch Reservoir by Developer during the preceding twelve (12) month period ending on the last day in which the County elects to take water delivery. "Operating and Maintenance Costs" shall be the routine and ordinary operating and maintenance costs for maintaining the pumping, diversion and delivery systems for water obtained from Anderson Ranch Reservoir for hydro electrical generating, and pumping, diversion and delivery of water to the County, by the Developer. Operating and Maintenance Costs shall not include: (i) any charges for the actual cost of electricity for water pumping, diversion or delivery; (ii) any cost for the construction of the pumping, diversion or delivery systems for the hydro electrical generating or the pumping, diversion or delivery systems to provide water to the County, or any other costs of construction by Developer or otherwise; and (iii) any cost for the replacement of any portion of said pumping, diversion or delivery systems. Billing invoices from the Developer shall specify the total amount of water pumped, diverted and discharged to the Anderson Ranch Reservoir by the Developer and the total amount of water diverted and delivered into Little Camas Reservoir for the benefit of the County as well as the actual Operating and Maintenance Costs for the twelve (12) month period described above in which the County takes water delivery. The Developer shall invoice the County within ninety (90) days from the end of water delivery to the County for that water delivery period and provide copies of its electricity cost, operation and maintenance costs, and its water diversion records to the County with the annual invoicing. Payment by the County shall be due and payable thirty (30) days after receipt of the annual invoicing.

(c) The Developer consents to use of its diversion point for diversion of water under the County's water right.

(d) The County will inform the Developer, or its designated agent, no less than twenty-four (24) hours prior to any County request for diversion and delivery of water under its water right. Provided, however, the County shall be under no obligation to request diversion or delivery of any water, or accept any water, and any County request for water diversion or delivery shall be in the County's sole discretion.

(e) The Developer shall withdraw its pending protest at the Idaho Department of Water Resources against the County's application for water permit no. 63-34348 within 24 hours of execution of this Amendment. The County agrees that it will not protest Developer's water right application No. 63-34403 filed with the Idaho Department of Water Resources.

(f) The Developer, the Landowners, the County, and their agents, consultants, and employees shall act in good faith regarding the County and Developer's pursuit of a water permit and license under their respective applications, pending before the Idaho Department of Water Resources, and shall also act in good faith regarding the County and Developer's relationship with the Mountain Home Irrigation District.

(g) Notwithstanding anything in the Development Agreement to the contrary, the County's obligations to pay for electricity for pumping and the County's share of operating and maintenance expenses under Section 2.2(b) of the Amendment in connection with the diversion and delivery of water by the Developer to the County under Section 2.2(a), shall be subject to and dependent upon the appropriations being made in the fiscal year for the diversion and delivery of water by the Elmore County Board of Commissioners for such purpose.

ALL OTHER PROVISIONS OF THE DEVELOPMENT AGREEMENT SHALL REMAIN IN FULL FORCE AND EFFECT.

[SIGNATURES TO FOLLOW]

## Commissioners hold hearing on Water agreement with CCE

by Stephanie Hunt  
Mountain Home News

On Aug. 24 the Elmore County Commissioners held a public hearing on the Cat Creek Energy Project. This hearing was for the First Amendment to the Development Agreement for the projects Conditional Use Permits. The Amendment covers the hydroelectric portion of the proposed development.

The project's CUPs were originally approved by the commissioners in Feb 2017 after they held two public hearings on five separate permits in November of 2016. The CUPs had made it to the commissioners on appeal of Cat Creek Energy after they were originally denied by the County Planning and Zoning Board.

When the permits were approved by the commissioners one of the conditions was for a Developmental Agreement to be approved by both the county and the developers. After a long process that saw many more public hearings the DA was finally agreed to and approved by the commissioners in Feb. 2018. The only way that agreement was able to be reached was by removing the contentious water portion of the contract with an agreement in its place stating the parties had a year to negotiate the terms of the hydroelectric portion.

In the terms of the water section CCE agreed to pay in full to construct the infrastructure needed to divert water from Cat Creek Reservoir to Little Camas Reservoir for the county. The county would only be required to pay for the power needed to divert the water and a pro-rated amount for maintenance and operation costs. The county would only be charged on years when the county decides to take the water.

CCE also agreed to provide copies of all of the records detailing invoices and water uses.

They also tried to simplify the process that would be necessary for the county to get water according to CCE Lawyer Terri Pickens Manweiler.

CCE also agreed to remove their protest over the county's water right application. Another part of the water section says the two parties will not impede each other when working with other agencies.

Manweiler also said that the developers had taken the questions and concerns of the public into consideration.

"We've made concessions," said Manweiler. "We're covering the cost of quite expensive infrastructure."

Gary Sletten, co-counselor to Manweiler, agreed adding the agreement to "cooperate in good faith" is pivotal.

"It doesn't feel like it's ever been in good faith," Commissioner Bud Corbus said, referring to the water protest and a meeting that a representative of CCE had with the Mountain Home Irrigation District.

When County Water Attorney Scott Campbell has his chance to speak he said that the water agreement was a good compromise between both parties.

Campbell went into deeper detail of each part of the water section. According to the agreement CCE shall deliver and deliver the maximum amount of water the county has asked for in its water right application. The water has to be delivered in order of priority, meaning the county would get their first. The water will also be delivered on a continuous basis and will not be held for storage in Cat Creek Reservoir.

One of the provisions that CCE justified upon says that the water will only be accepted into Little Camas Reservoir upon the discretion of the Mountain Home Irrigation District. Another one was that the diversion of water shall not hinder CCE's normal operations, which Campbell admitted, could cause issues down the road.

Water levels in CCE Reservoir must also be above 20,000 acre feet, but Campbell said that should not pose a problem since that is considered the base level for the reservoir.

Taking water in a given water year is at the sole discretion of the county and they only pay if they decide to take it. The county must give CCE 24 hours notice when they decide to accept the water.

"Developers operations and maintenance costs, isn't that pretty broad," asked Commissioner Corbus.

Couldn't that be pretty substantial."

"It could be very substantial," responded Campbell. But he added that the cost would be based upon proportion of the water used by the county.

The developer would not agree without the operational costs and maintenance and the county would not agree if it had to pay to build the infrastructure.

It still did not sit right with the commissioners.

"Citizens have been sold one thing at public hearings in 2016 and are now paying additional costs of operations and maintenance," Commissioner Corbus pointed out.

"I am fully supportive of the amendment," County Attorney Buzz Grant said. "I strongly recommend it."

Grant went on to inform the room that S Bar Ranch had filed a Notice of Objection to the hearing the day before.

The first item in the objection was asking for Commissioner Al Hofer to not participate in the matter. Grant said he was "flabbergasted that was even mentioned" since Commissioner Hofer had recused himself from the matter months ago after becoming part of the group helping to negotiate the terms of the Developmental Agreement.

S Bar Ranch also feels that the approval of the permits was a conflict of interest for the commissioners. According to Grant the Idaho State SBR was referring to refers to the personal benefit of a commissioner and does not apply to this situation.

"If a county could not benefit no CUP could ever be approved," Grant said.

Merlin Clark, counsel for S Bar Ranch, said that they "obviously have a disagreement" on the meaning of conflict of interest. He went on to say that matter would eventually have to be decided by the courts if the project proceeds.

"The county is dependent on the water diversion," Clark said.

Commissioner Corbus quickly contradicted that saying it was "not true" and that the county has other options to receive water.

Campbell said that the point being raised by SBR was very clearly contemplated in the agreement. The diversion provided by CCE is the county's second point of diversion with the County's main diversion being located downstream of CCE.

Clark argued that it still makes a point of establishing that second diversion spot and that gives the county an interest in the approval of the CUP.

The county has an obligation to be neutral and "our whole goal is for the people of the county," Commissioner Chairman Wes Wootan said.

Clark finished by saying that SBR had objected to Commissioner Hofer "just to preserve that right for down the road."

During CCE's rebuttal Manweiler pointed out that the groups had spoken about the costs to the county during the public hearings for the Development Agreement.

"It's not clear and concise," Commissioner Corbus said "and we are talking about a billion dollar project."

Manweiler answered that the negotiating parties had looked at many revisions on the costs and "the county is literally only paying for what the county uses."

She went on to say that every acre foot of water has to be identified in CCE's records. They "have to prove it is actual." Including not only the water diverted to Little Camas for the county but the total water pumped from Anderson Ranch Dam. They must also provide all the records of the costs of power and operation within 90 days from the end of the water use year.

"The provisions are as specific as we can be without the actual costs," Manweiler said. "We did the best we could to protect both the county and Cat Creek."

She went on to address the argument that the project is a conflict of interest for the county.

"Saying this is a conflict of interest is like saying a condition to pave a road, add sewer and water lines electric would be a conflict of interest," Manweiler said.

According to the conflict of interest statute an employee cannot benefit from a development, SBR

argues that the commissioners are employees of the county and therefore have a conflict.

Before closing the hearing a deliberation date of Sept. 7 at 1:30 p.m. was set.

A deliberation over the re-hearing on other amendments to the Development Agreement had been set to begin right after the hearing.

Commissioner Corbus started the deliberations by saying that he and Commissioner Wootan had received the bulk of the paperwork the day before and he would like more time to digest it before making any decision.

"It is a tremendous amount of information to digest and understand," Commissioner Corbus said.

It was decided that the two deliberations will follow back-to-back on Sept. 7. The deliberation on the re-hearing is scheduled to go first at 1:30 p.m.

"We are just trying to make sure we do the best job we can," Commissioner Wootan said.

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## Mountain Home Competes in Da



On Aug. 25 Mountain Home's Cross Country team traveled to Ponderosa State Park in McCall to compete in the Dash and Splash. Teams were not scored and the runners did not run as Mountain Home Tigers.

The girls ran in a tight pack throughout the race. Hannah Brown was fifth with a time of 23:58, Camille Ochoa; sixth with 24:15, Charlie Lawson; seventh with 24:16, and Rachel Langman; eighth with 24:17.

For the boys Jacob Criddle came in first with a time of 18:22 and was named King of the Hill for being the first runner to reach the top of the biggest hill in the race. Christian Estrella finished third with a time of 19:52. Korbin Peterson; fourth with 19:56.

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Have you **HEARD** about the **BIRD?**

Fest Fans, we need your help! Elmore County is the home of the Greater Sage-Grouse, a beautiful, ground-dwelling bird that is a candidate for listing under the Endangered Species Act. Together, let's work to ensure the well-being of the Sage-Grouse as well as its surrounding habitat. Here's how you can help:



### **STAY ON SITE**

Do not use the surrounding Sage-Grouse habitat for camping, hiking, riding off-road vehicles or exercising your dogs.



### **FEST RESPONSIBLY**

Fireworks, off-road driving, smoking\* and shooting all increase the risk of wildfires and are strictly prohibited on Festival grounds.

*Smoking is permitted only in designated areas within the venue.*



### **KEEP WATCH**

Notify on-site security if you see something out of place or notice someone venturing off into the wild, starting a campfire or engaging in otherwise potentially dangerous behavior.

### **For more information, contact:**

#### **Idaho Department of Fish and Game**

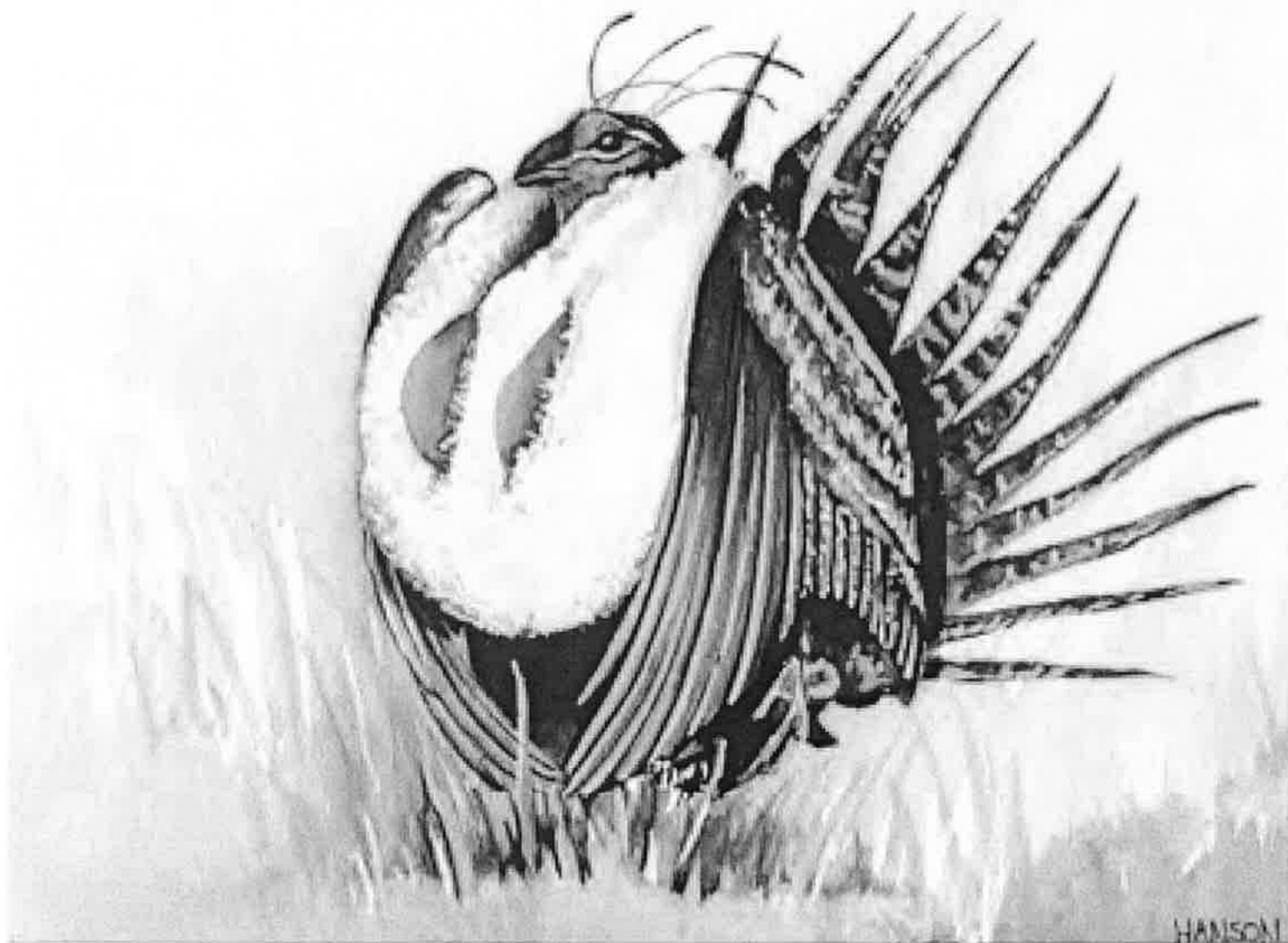
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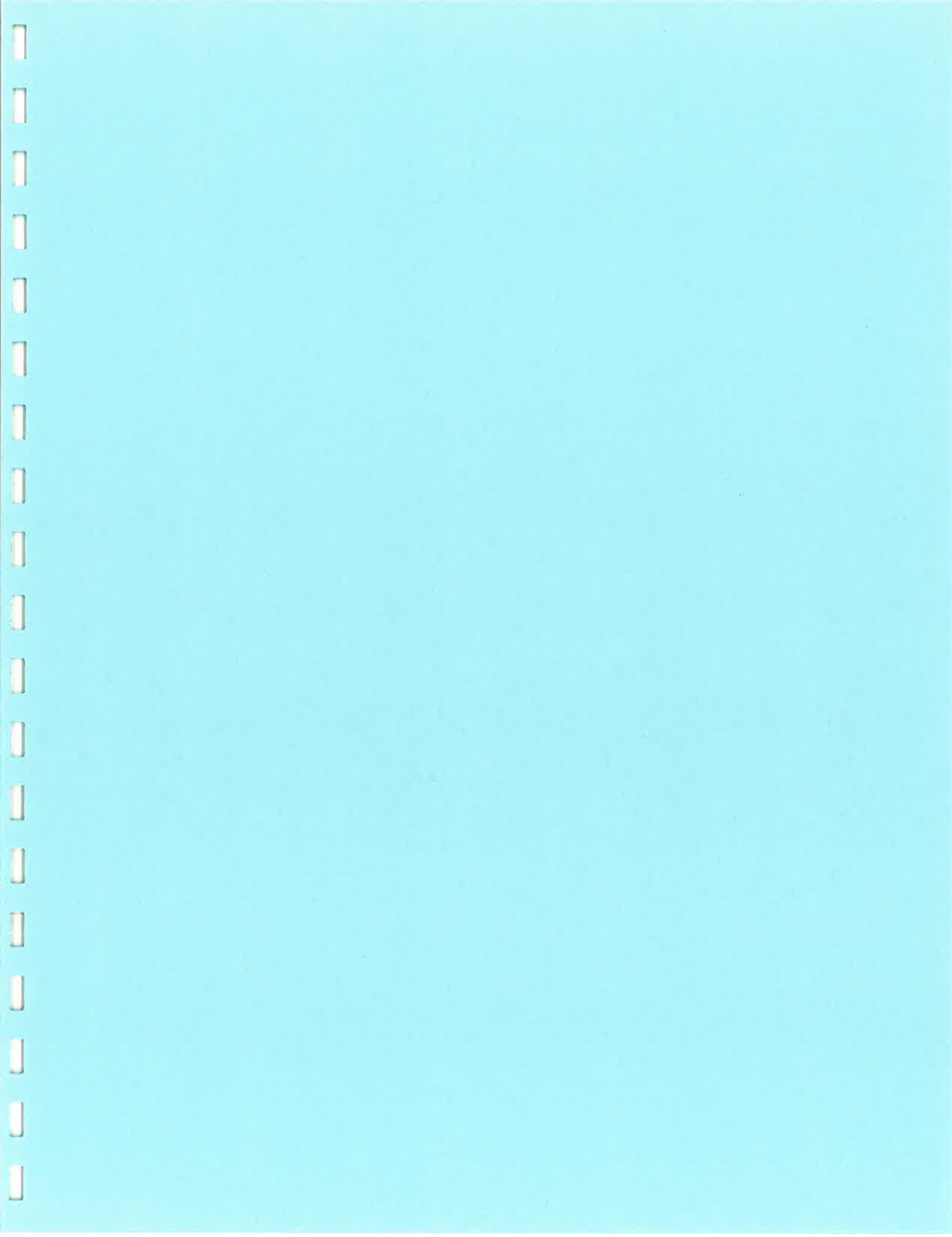
#### **Natural Resources Conservation Service**

Contact the District Conservationist at the NRCS Field Office nearest you

#### **U.S. Fish and Wildlife Service**

Contact the Idaho Fish and Wildlife Office 208-378-5267 (tel:12083785267) or 208-685-6951 (tel:12086856951).







## United States Department of the Interior

### BUREAU OF RECLAMATION

Pacific Northwest Region  
Snake River Area Office  
230 Collins Road  
Boise, ID 83702-4520

MAR 24 2017

IN REPLY REFER TO:

SRA-1000  
1.1.0

Mr. James T. Carkulis  
Cat Creek Energy, LLC  
398 S. 9<sup>th</sup> St., Suite 240  
Boise, ID 83702  
Jcarkulis@exergydevelopment.com

Subject: Bureau of Reclamation Expectations regarding the Lease of Power Privilege Process for Pumped-Storage Hydropower Development at Anderson Ranch Reservoir, Boise Project, Idaho

Dear Mr. Carkulis:

It has come to our attention that Cat Creek Energy, LLC (Cat Creek) representatives have recently publicly portrayed significant progress in the Lease of Power Privilege (LOPP) process for the proposed pumped-storage hydropower development at Anderson Ranch Reservoir, a Reclamation facility. As a result of those statements, Reclamation is concerned that Cat Creek does not understand the LOPP process, current status, or a realistic timeline, especially given that little progress has been made since Reclamation notified Cat Creek of its selection as preliminary lessee by letter dated October 17, 2016. The intent of this letter is to correct Cat Creek's mistaken representations by emphasizing the current status of the process and highlighting our reasons for concern.

Reclamation recently viewed a briefing Douglas R. Jones provided to the Idaho House Environment, Energy and Technology Committee on March 20, 2017, located at <http://iso.legislature.idaho.gov/MediaArchive/MainMenu.do>. Erroneous portrayals of the progress in that briefing and other venues have included the following:

- Cat Creek has a letter from Reclamation to use water out of Anderson Ranch Reservoir
- Cat Creek has designated an agency (FERC or Reclamation) as the lead
- The Environmental Impact Statement needs to be completed and signed off within six months
- Cat Creek intends to start construction by late this summer (2017) and have the entire project up and running by 2020

Reclamation's October 17, 2016 letter to Cat Creek does not authorize Cat Creek to use water from Anderson Ranch Reservoir or to begin construction activities. The letter indicates next steps in the LOPP process. Two important steps are reiterated here. First, Reclamation requires signature of a contributing funds agreement that will fund Reclamation review of the project, including environmental compliance activities, before proceeding further. Second, a mutually agreed upon preliminary LOPP agreement will be necessary before further steps can be taken. Neither of these steps have been completed. The law imposes on Reclamation strict requirements to have a contributed funds agreement in place before even expending efforts on an LOPP project once the preliminary lessee has been identified.

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The location of the proposed project is within the jurisdiction of both Reclamation and the Federal Energy Regulatory Commission (FERC). Both agencies are required to comply with federal environmental laws, including the National Environmental Policy Act (NEPA). Reclamation and FERC will decide who will lead the compliance effort. While both agencies have discussed potential roles, Reclamation and FERC will need to define the process for coordinating roles and responsibilities following Reclamation receipt of the contributed funds agreement, as well as Cat Creek communicating to FERC which of the three FERC processes it would like to utilize.

The anticipated timeline for the NEPA process on a project of this complexity is several years. Anderson Ranch Reservoir is habitat for Bull Trout, a listed endangered species, further complicating the NEPA process and likely extending the timeline. Given Cat Creek's delay in executing a contributed funds agreement, the second step in this lengthy process, Reclamation has been forced to release designated resources to address active demands and will have to re-assemble its team if and when Cat Creek executes the agreement.

Considering the project complexities and relevant legal mandates, Reclamation does not believe the publically portrayed timelines are realistic. We do not want to hinder progress, but want to make clear our expectations for the project and the need for Cat Creek to engage in order to begin detailed planning and review. Please feel free to contact me at 208-383-2246 if you have any questions.

Sincerely,



Roland K. Springer  
Area Manager

FOR

cc:

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